

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

W. ROSE, INC.

Employer

and

SHOPMEN'S LOCAL 502, INTERNATIONAL  
ASSOCIATION OF BRIDGE, STRUCTURAL,  
ORNAMENTAL AND REINFORCING  
IRON WORKERS, AFL-CIO<sup>1</sup>

Case 4-RC-21012

Petitioner

and

EMPLOYEES' ASSOCIATION  
OF W. ROSE, INC.

Intervenor

**REGIONAL DIRECTOR'S DECISION AND  
DIRECTION OF ELECTION**

The Employer, W. Rose, Inc., is engaged in the production of masonry tools at a facility in Sharon Hill, Pennsylvania. The Petitioner, Iron Workers Local 502, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of the Employer's production and maintenance employees. The Intervenor currently represents the employees in the petitioned-for unit and has a five-year collective-bargaining agreement with the Employer which expires on December 31, 2006. The Employer contends that this agreement constitutes a contract bar to the petition.

A hearing officer of the Board held a hearing, which only the Petitioner attended.<sup>2</sup> Thereafter, the Employer and the Petitioner filed briefs with me. I have considered the evidence

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<sup>1</sup> The Petitioner's name appears as amended at the hearing.

<sup>2</sup> All parties, however, entered into a written stipulation, inter alia, as to commerce, the labor organization status of the Petitioner and the Intervenor, and the bargaining unit.

and the arguments presented by the parties and, as discussed below, I have concluded that the contract does not act as a bar to the petition. Accordingly, I have directed an election in the petitioned-for unit.

In this Decision, I will briefly review the relevant law governing contract bars. Then, I will present the facts and reasoning that support my conclusion.

## **I. RELEVANT LAW, FACTS, AND ANALYSIS**

As the Board stated in *General Cable Corp.*, 139 NLRB 1123 (1962), contracts of up to three years will bar elections for their entire periods, but contracts of more than three years may operate as a bar for only so much of their term as does not exceed three years. See also *General Dynamics Corp.*, 175 NLRB 1035, 1036 (1969). If a contract is of a duration of more than three years, a petition may be filed during the 60-day to 90-day “open period” prior to the third anniversary date of the contract. Petitions may also be filed after the third anniversary date if no new agreement is made during the 60-day insulated period prior to the third anniversary. *Dobbs International Services, Inc.*, 323 NLRB 1159, 1160 (1997); *General Dynamics Corp.*, above.

The collective-bargaining agreement between the Employer and the Intervenor is effective by its terms from January 2, 2001 to December 31, 2006. A timely petition could have been filed during the 60 to 90-day open period prior to the third anniversary of the agreement, i.e., from October 4, 2003 to November 3, 2003, or any time after the third anniversary, January 2, 2004. The subject petition was filed on April 5, 2005, and as it was filed after the third anniversary it is timely.

The Employer contends that a petition filed after the 60 to 90-day open period is barred by the contract, even if the third anniversary has passed, citing *Union Carbide Corp.*, 190 NLRB 191 (1971). In *Union Carbide*, however, the Board found the contract to bar a petition filed after the third anniversary date only because the parties had previously negotiated an extension of the agreement for an additional two years. Without such an extension, the petition in that case would have been timely. Indeed, in *Union Carbide*, above at 191, the Board stated that because the third anniversary of the agreement had passed, “had the Intervenor and the Employer not renewed their agreement, the petition filed on that date would have been entertained and processed.” In the instant case, there was no contract extension.

The Employer further contends that the Board should change the three-year contract bar rule set forth in *General Cable*, supra, and extend the period of the bar for a longer time. In this connection, the Employer asserts that agreements of longer than three years are now the norm in collective bargaining and the Board should recognize this historical change. However, the Board expressly considered the issue of extending the three-year bar in *Dobbs International Services*, above, and rejected the idea.<sup>3</sup> Accordingly, based on current Board law, I find that the petition

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<sup>3</sup> In that case, former Chairman Gould dissented and proposed that the Board “should consider the contract bar rule in light of recent trends in the duration of contracts.”

was timely filed. I therefore find that a question concerning representation exists, and I shall direct an election in the petitioned-for unit.

## **II. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and for the reasons set forth above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part-time production and maintenance employees employed by the Employer at its 1300 Elmwood Avenue, Sharon Hill, Pennsylvania facility, excluding all other employees, office clerical employees, watchmen, professional employees, guards, and supervisors as defined by the Act.

## **III. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by the **Shopmen's Local 502, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, AFL-CIO** or by **Employees' Association of W. Rose, Inc.** or by **Neither**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

### **A. Eligible Voters**

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike,

who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike, which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are: 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility; 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date; and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the **full** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **May 11, 2005**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597-7658, or by e-mail to [Region4@NLRB.gov](mailto:Region4@NLRB.gov).<sup>4</sup> Since the list will be made available to all parties to the election, please furnish a total of three (3) copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

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<sup>4</sup> See OM 05-30, dated January 12, 2005, for a detailed explanation of requirements which must be met when electronically submitting representation case documents to the Board, or to a Region's electronic mailbox. OM 05-30 is available on the Agency's Web site at [www.nlr.gov](http://www.nlr.gov).

**C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

**IV. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. A request for review may also be submitted by e-mail. For details on how to file a request for review by e-mail, see <http://gpea.NLRB.gov/>. This request must be received by the Board in Washington by 5:00 p.m., EDT on **May 18, 2005**.

Signed: May 4, 2005

at Philadelphia, Pennsylvania

/s/ [Dorothy L. Moore-Duncan]  
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DOROTHY L. MOORE-DUNCAN  
Regional Director, Region Four